DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 – 3, 6 – 7, 9 – 21, 44 – 46, 83 – 85 and 88 – 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizoguchi (JP02166375) in view of Forde (WO 89/06142).

With respect to claim 1 – 3, 6 – 7, 9 – 21, 44 – 46, 83 – 85 and 88 – 97 , Mizoguchi discloses a cold-heat material that provides an absorbent material intermixed with ammonium nitrate (cooling compound) as set forth in the abstract.

The difference between Mizoguchi and the claims is the provision that a specific absorbent capacity and/or cooling effect is taught.

The examiner contends that based on the fact that the prior art discloses an absorbent intermixed with the specific cooling compound as claimed, that one of ordinary skill in the art can reasonably assume that the properties as claimed (absorbent capacity and/or cooling effect) would at least to be similar that that as claimed.

Nonetheless, Forde teaches the use of an absorbent article having an acidic superabsorbent to control the pH of the article as set forth in the abstract

It would have been obvious to one of ordinary skill in the art to provide the absorbent as taught by Forde to the article of Mizoguchi because the modified absorbent of Forde reduces the amount and effect of undesirable ammonia in the garment as set forth on pages 1 – 3.

Forde is also considered with providing the article with an adjustable amount of non acidic material as desired (page 2, lines 25 – 39). Therefore, it would have been obvious to one of ordinary skill in the art to modify the acidic superabsorbent (i.e., absorbent capacity) and/or non-acidic or basic material (i.e., cooling effect), both of which effect the pH and/or endothermic effect, in order to produce a product with the desired results consistent with the intentions as set forth by both Mizoguchi (abstract) and Forde (pages 1 – 3).

Response to Arguments

Applicant's arguments filed January 8, 2010 have been fully considered but they are not persuasive.

Initially, the applicant argues that Mizoguchi does not disclose any kind of absorbent material, the examiner disagrees. Sodium sulphate as set forth in the abstract of Mizoguchi is an absorbent material.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, the motivation to do so is found in the references themselves. As stated in the rejection, one of ordinary skill in the art would be motivated to modify the absorbent of Mizoguchi with the teachings of Forde because the modified absorbent of Forde reduces the amount and effect of undesirable ammonia in the garment as set forth on pages 1 – 3. The applicant argues that Forde alone reduces the effect of ammonia in the garment, but Mizoguchi is the primary reference used which lacks the teaching and therefore would benefit from the modification as taught by Forde.

The applicant also argues that neither reference discloses a basic material. The examiner disagrees and refers to page 5 of Forde which discloses water with a pH of 7.8. There is no mistaken impression equating the basic material to a cooling compound. The cooling compound has been set forth by the prior art as in the rejection of claim 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michele Kidwell/
Primary Examiner, Art Unit 3761